

# Agenda

## Item #3



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: July 19, 2011  
Re: Staff Proposal for August 16, 2011 Special Election

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On August 16, 2011, voters in District 121 of the Maine House of Representatives will vote in a special election for State Representative. Former Representative Cynthia Dill was elected to the State Senate in an earlier special election. Two candidates have registered for the August 16 election: Nancy Thompson and Kimberly Monaghan-Derrig. Ms. Thompson has qualified for Maine Clean Election Act (MCEA) funding and Ms. Monaghan-Derrig intends to qualify.

Since 2008, MCEA candidates for the House have received an initial payment of \$4,144 for a general election or a special election. In addition, roughly half of House candidates have qualified to receive "matching funds." Under 21-A M.R.S.A. § 1125(9) (attached as appendix), participating candidates have received matching funds if their MCEA funding was less than the total receipts or expenditures of an opponent in their race, taking into consideration independent expenditures.

Arizona has had a similar matching funds provision in its public campaign financing system. The constitutionality of this provision was challenged in Arizona Free Enterprise Club's Freedom Club PAC v. Bennett. On June 27, 2011, the U.S. Supreme Court held that Arizona's matching funds provision "substantially burdens the speech of privately financed candidates and independent expenditure groups without serving a compelling state interest" and thus violates the First Amendment.

Maine's matching funds provision has been the subject of a similar constitutional challenge in a suit that was brought by Rep. Andre Cushing and Respect Maine PAC in

federal district court, Cushing v. McKee, Docket No. 1:10-cv-330-GZS, during the 2010 election cycle. The plaintiffs were unsuccessful in obtaining an injunction preventing the Commission from paying matching funds to MCEA candidates in 2010. After the 2010 election, the case was put on hold pending the Supreme Court's decision in AZ Free Enterprise Club. Based on a recent conference of counsel with the court, the staff anticipates issuance of an order in the very near future declaring Maine's matching funds provision unconstitutional based on the Supreme Court's ruling.

The Commission staff therefore recommends that the Commission adopt the policy of not paying matching funds in the August 16 special election. The Commission staff has already taken the precaution of alerting Nancy Thompson and Kimberly Monaghan-Derrig that matching funds likely would not be available to them. The candidates have understood that their participation in the MCEA program in the August 16 special election would probably involve limiting their total spending to up to \$500 in seed money raised and the initial payment of \$4,144. Neither candidate expressed any objections to this limitation.

Thank you for your consideration of this memo.

## **Appendix**

**21-A MRSA 1125(9). Matching funds.** When any report required under this chapter or chapter 13 shows that the sum of a candidate's expenditures or obligations, contributions and loans, or fund revenues received, whichever is greater, in conjunction with independent expenditures reported under section 1019-B, exceeds the sum of an opposing certified candidate's fund revenues, in conjunction with independent expenditures, the commission shall issue immediately to the opposing certified candidate an additional amount equivalent to the difference. Matching funds for certified candidates for the Legislature are limited to two times the amount originally distributed under subsection 8-A. Matching funds for certified gubernatorial candidates in a primary election are limited to half the amount originally distributed under subsection 8-A for contested candidates and subsection 8-A. Matching funds for certified gubernatorial candidates in a general election are limited to the amount originally distributed under subsection 8-A.